IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 160 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX,

Versus

SMT. CHANCHALBEN, W/O. HIRALALDUDHIA,

Appearance:

1. INCOME TAX REFERENCE No. 160 of 1990

MR MANISH R BHATT for Petitioner No. 1

MR MANISH J SHAH with MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred to this Court for its

opinion:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the compensation money received by the other co-parceners really belonged to the co-parceners and not to the assessee and thereby deleting the interest addition made by the I.T.O ?"

2. While dealing with this issue, the Tribunal in its order dated 7.12.1989 has held that the controversy is covered by the order of the Tribunal dated 19.6.1985 in the assessee's own case for assessment year 1977-78 in ITA No. 2588(Ahd)/1984. Following the said order, the Tribunal has dismissed the appeal filed by the Department.

3. The earlier years order was challenged in reference before this Court in Income-tax Reference No. 27 of 1986 and Income-tax Reference No. 6 of 1986. While disposing of the above two references vide judgment dated 14.6.2001, it was held in para 4 as under :-

"In view of the fact that in a similar controversy, this Court had directed the Tribunal to decide the appeal afresh, we are of the view that in the present references also, the Tribunal should be directed to decide the appeals afresh especially in view of the fact that the decisions rendered by the Tribunal in both the appeals are based on the earlier decision of the Tribunal, which was subject matter of reference before this Court."

4. Following the aforesaid judgment, we decline to give any answer to the question referred to us and direct the Tribunal to decide the appeal afresh in light of the observations made in the above referred judgment.

This reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-